IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-07-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1490 of 2013

Kumaravel .. Petitioner

Versus

State represented by
Inspector of Police
Central Crime Branch
Chennai - 600 006 .. Respondent

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code against the Order dated 06.11.2013 passed in C.M.P. No. 3004 of 2013 in C.C. No. 340 of 2012 on the file of Judicial Magistrate No.I, Poonamallee.

For Petitioner : Mr.R.Karthikeyan for Mr. S. Sivakumar
For Respondents : Mr. V. Arul
Government Advocate (Crl.side)

ORDER

The revision petitioner, who is arrayed as A-2 in C.C. No. 340 of 2012 on the file of the learned Judicial Magistrate No.I, Poonamallee, has come forward with this Criminal Revision Case aggrieved by the dismissal of the petition filed by him seeking for discharge.

2. The case of the prosecution is that Mr. K. Ramadoss, Senior Branch Manager, Bank of Baroda, Ramavaram Branch, Chennai has given a complaint stating that Dr. Gunasekaran (A-1) claiming to be a Doctor practicing acupuncture therapy has produced bogus title deeds to obtain a loan amount of Rs.5,50,000/- from the bank. According to the defacto complainant, on 24.08.2006, Dr. Gunasekaran (A-1) approached the Bank and sought for a term loan for developing his clinic at M.G.R. Nagar, Chennai and offered the immovable property standing in his name at No.2-D, First Floor, Ayyappanthyangal Bus Depot, back side of Natesan Nagar, Chennai - 600 056 as security. On 14.09.2006, the bank sanctioned a loan of Rs.5,50,000/- and as per the terms of sanction, the loan amount has to be repaid in instalments commencing from October 2006. However, after availing the loan, the first accused did not repay the instalment amount. The bank also sent several notices and attempted to personally contact A-1 for recovery of the dues, but it went vain. On suspicion, the bank made verification and found that title deeds pertaining to the property offered by A-1 as security was forged and fabricated. In such circumstances, the Manager of the Bank gave a complaint to the respondent police based on which the case in Crime

No. 476 of 2007 came to be registered for the offences punishable under Section 465, 467, 468, 471, 420 of IPC. Upon registration of the case, an investigation was carried out during which it came to light that the first accused, out of the loan amount of Rs.5,50,000/- had transferred a sum of Rs.5,01,572/- to the savings bank account of the revision petitioner (A-2) who claimed himself to the proprietor of Digital Video System. It also came to light that the revision petitioner (A-2) has raised bogus invoice in the name of the first accused as though he supplied certain medical equipments, but the fact remains that no such equipment indicated in the invoice was supplied by him to A-1.

3. During the pendency of the Criminal trial, the revision petitioner has filed CMP No. 3004 of 2003 before the trial court contending that there is no iota of material evidence made available by the prosecution to connect him to the offences alleged and therefore, he prayed for discharge from the criminal case. The trial court dismissed the petition for discharge, which gave rise to the filing of the present Criminal Revision Case.

4. The learned counsel appearing for the revision petitioner would vehemently contend that the only piece of evidence made available by the prosecution to connect the revision petitioner/A-2 in the criminal case is the confession said to have been given by the first accused. The revision petitioner/A-2 ought not to have been implicated as an accused only on the basis of an alleged confession statement given by the first accused especially when it is not corroborated by any other witness or material evidence. According to the learned counsel for the petitioner, the trial court has misinterpreted the confession of the first accused, who has clearly stated that he had handed over the xerox copy of the document of title deeds to one Murali and it was the said Murali who had taken the same and later handed over it as original document to the bank. Even the first accused had clearly confessed that the above said Murali has created fabricated documents and the revision petitioner/A-2 has no role in fabricating the documents. The trial court also misunderstood the statement given under Section 161 of Cr.P.C. by the first accused as well as LW9 Krishnamoorthy and a thorough reading of such statement would only indicate that no where the petitioner's name was disclosed by them or the petitioner has any role to play. The trial court has dismissed the application for discharge without assigning any valid reason and therefore, the learned counsel appearing for the revision petitioner/A-2 prayed for allowing the Criminal Revision Case.

5. On the contrary, the learned Government Advocate (Criminal side) would contend that it is not the case of the prosecution that the revision petitioner was implicated as an accused only on the basis of the confession given by co-accused. During investigation, it came to light that a major portion of the loan amount availed by the first accused with the defacto complainant bank was transferred and/or credited into the account of the revision petitioner/A-2. The very fact that a huge amount of Rs.5,01,572/- out of the loan amount of Rs.5,50,000/- was credited to the account of the revision petitioner/A-2 during the relevant period would indicate his involvement and conspiracy along with the first accused. It is

further stated that the revision petitioner/A-2, in order to facilitate the first accused to show that the loan amount was utilised for purchasing a medical equipment, has issued a bogus invoice in favour of the first accused without even supplying the material. According to the learned Government Advocate, these material evidence collected against the accused have to be proved during the course of trial. As regards discharge, a prima facie case has been made out against the revision petitioner/A-2 to show his conspiracy and involvement in the transaction along with the first accused and therefore, the trial court has rightly dismissed his application for discharge and it needs no interference by this Court.

6. I heard the learned counsel for the revision petitioner/A-2, the learned Government Advocate (Criminal side) appearing for the State and perused the material records made available. The trial court dismissed the petition filed by the revision petitioner/A-2 for discharge by pointing out that the confession of the co-accused clearly indicates the involvement of the revision petitioner/A-2 besides that a huge sum of Rs.5,01,572/- out of Rs.5,50,000/- was deposited into the account of the revision petitioner/A-2 by the first accused. That apart, the revision petitioner/ A-2, has produced a bogus invoice in the name of the first accused as though he supplied certain medical equipments to him, however, such equipment was never supplied by the revision petitioner/A-2 to A-1. The said invoice furnished by the revision petitioner/A-2 was used by the first accused to show as if he had purchased medical equipment out of the loan amount. The trial Court also relied on the statement of LW9, Chief Manager of Indian Overseas Bank, Mylapore to conclude that there were transactions made in the account of the revision petitioner/A-2 out of the loan amount availed by the first accused from the defacto complainant bank. The trial court also relied on the decision of this Court in the case of (Damodaran vs. State rep. by Inspector of Police, Central Crime Branch, Chennai) reported in 2006 (1) MLJ Criminal 584 to conclude that the trial court can frame charges if there are materials showing the possibility about the commission of the crime against an accused.

7. As rightly pointed out by the trial court, when there are material evidences made available against the revision petitioner/A-2 in the form of confession statement made by the co-accused, invoice raised by the revision petitioner/A-2 in favour of the first accused as though some medical equipments have been supplied to him besides the statement of LW9, Chief Manager of the Indian Overseas Bank, Mylapore Branch, the petitioner cannot be discharged from the criminal prosecution. It is not as though the revision petitioner/A-2 was implicated only on the basis of confession statement of the co-accused, but there are other material evidences made available against him by the prosecution. The correctness or validity of those material evidences produced by the prosecution against the revision petitioner/A-2 can be tested only during the course of trial and the participation of the revision petitioner/A-2 in the trial is absolutely necessary. Therefore, at this stage, the revision petitioner/A-2 cannot be discharged from the criminal trial especially when the prosecution has made available certain material

records to implicate him in the commission of crime. I do not find any reason to interfere with the reasoned order passed by the trial Court.

8. In view of the above, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

rsh
To
1.The Judicial Magistrate No.I
Poonamallee.

2.-do- Thro The Chief Judicial Magistrate, Tiruvallore.

3.The Inspector of Police
Central Crime Branch
Chennai - 600 006.

4.The Public Prosecutor, High Court, Madras

Crl.R.C. No. 1490 of 2013

mg(co)
pmk.21.7.2015